

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JOHN R. BUND II, personally, as Executor of  
the Estate of Richard C. Bund, deceased, S.  
SCOTT JAMES and NOEL L. JAMES, a  
married couple, and on behalf of others  
similarly situated,

Plaintiffs,

vs.

SAFEGUARD PROPERTIES, LLC, a  
Delaware corporation,

Defendant.

No. 2:16-cv-920 MJP

STIPULATED MOTION FOR A RULE  
502(d) ORDER

(CLERK'S ACTION REQUIRED.)

**NOTED FOR MOTION:  
MAY 8, 2018**

The purpose of this stipulated proposed order is to expedite the flow of discovery material, facilitate the prompt resolution of disputes over privilege, and protect material to be kept confidential or privileged, pursuant to the Court's inherent authority, its authority under Federal Rule of Civil Procedure 26(c) and Federal Rule of Evidence 502(d), and the judicial opinions interpreting such Rules.

This stipulated proposed order is entered into pursuant to Rule 502(d) of the Federal Rules of Evidence. If a Producing Party discloses information in connection with the pending litigation that the Producing Party thereafter claims to be privileged or protected by the attorney-client privilege or attorney work product protection ("Disclosed Protected Information"), the disclosure of the

1 Disclosed Protected Information shall not constitute or be deemed a waiver or forfeiture of any claim  
2 of privilege or work product protection that the Producing Party would otherwise be entitled to assert  
3 with respect to the Disclosed Protected Information and its subject matter in this proceeding or in any  
4 other federal or state proceeding.

5 A Producing Party may assert in writing attorney-client privilege or work product protection  
6 with respect to Disclosed Protected Information. The Receiving Party must—unless it contests the  
7 claim of attorney-client privilege or work product protection—within five business days of receipt of  
8 that writing, (i) return or destroy all copies of the Disclosed Protected Information, and (ii) provide a  
9 certification of counsel that all of the Disclosed Protected Information has been returned or destroyed.  
10 Within five business days of receipt of the notification that the Disclosed Protected Information has  
11 been returned or destroyed, the Producing Party must produce a privilege log with respect to the  
12 Disclosed Protected Information.

14 If the Receiving Party contests the claim of attorney-client privilege or work product  
15 protection, the Receiving Party must—within five business days of receipt of the claim of privilege  
16 or protection—provide the Producing Party a draft Local Civil Rule 37(a)(2) submission requesting  
17 disclosure of the Disclosed Protected Information (a “Disclosure Motion”). The Receiving Party must  
18 seek to file the Disclosure Motion under seal and must not assert as a ground for compelling  
19 disclosure the fact or circumstances of the disclosure, and may not disclose, rely on or refer to any of  
20 the Disclosed Protected Information. Pending resolution of the Disclosure Motion, the Receiving  
21 Party must sequester the Disclosed Protected Information and not use the Disclosed Protected  
22 Information or disclose it to any person other than as required by law.

1 Disclosed Protected Information that is sought to be reclaimed by the parties to this case  
2 pursuant to this stipulated proposed order shall not be used as grounds by any third party to argue  
3 that any waiver of privilege or protection has occurred by virtue of any production in this case.

4 The Producing Party retains the burden of establishing the privileged or protected nature of  
5 the Disclosed Protected Information. Nothing in this paragraph shall limit the right of any party to  
6 petition the Court for an *in camera* review of the Disclosed Protected Information.

7  
8 Nothing in this stipulated proposed order shall relieve counsel for any Receiving Party of any  
9 existing duty or obligation, whether established by case law, rule of court, regulation or other source,  
10 to return, and not to review, any privileged or work product materials without being requested by the  
11 Producing Party to do so. Rather, in the event a Receiving Party becomes aware that it is in possession  
12 of what appears to be privileged documents or materials, then counsel for the Receiving Party shall  
13 immediately: (i) cease any further review or use of that document or material and (ii) notify the  
14 Producing Party of the apparent production of Disclosed Protected Information, requesting whether  
15 the documents or materials are Disclosed Protected Information. In the event the Producing Party  
16 confirms the documents or material are Disclosed Protected Information, the Receiving Party shall  
17 (i) promptly return or destroy all copies of the Disclosed Protected Information in its possession and  
18 (ii) take reasonable steps to retrieve all copies of the Disclosed Protected Information distributed to  
19 other counsel or non-parties.  
20

21 DATED this 8th day of May, 2018.

22 JEFFERS, DANIELSON, SONN &  
23 AYLWARD, P.S.

24  
25 By: s/ Clay M. Gatens  
Clay M. Gatens, WSBA No. 34102

1 Sally F. White, WSBA No. 49457  
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8 DATED this 8th day of May, 2018.

10 DAUDT LAW PLLC

11 By: s/ Michael D. Daudt  
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18 mike@daudtlaw.com

17 DATED this 8th day of May, 2018.

18 TERRELL MARSHALL LAW GROUP  
19 PLLC

20 By: s/ Beth E. Terrell  
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22 Blythe H. Chandler, WSBA No. 43387  
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DATED this 8th day of May, 2018.

LEE SMART, P.S., INC.

By: s/ Pamela J. DeVet

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Kellan W. Byrne, WSBA No. 49825  
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DATED this 8th day of May, 2018.

KIRKLAND & ELLIS LLP

By: s/ Leonid Feller

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leonid.feller@kirkland.com

1 **I. ORDER**

2 It is so ordered.

3 Dated this \_11th\_ day of May, 2018.

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7 The Honorable Marsha J. Pechman  
8 United States Senior District Court Judge  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date provided at the signature below, I electronically filed the  
3 preceding document with the Clerk of the Court using the CM/ECF system, which will send  
4 notification of such filing to the following individuals:

5 Mr. Clay Gatens  
6 Ms. Devon A. Gray  
7 Jeffers, Danielson, Sonn & Aylward, P.S.  
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23 bchandler@terrellmarshall.com

24 I certify under penalty of perjury under the laws of the United States of America that the  
25 foregoing is true and correct, to the best of my knowledge.

DATED this 8th day of May, 2018 at Seattle, Washington.

LEE SMART, P.S., INC.

By: /s/ Pamela J. DeVet  
Pamela J. DeVet, WSBA No. 32882  
Of Attorneys for Defendant  
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